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February 1, 2024

BY ECF

Hon. Carol B. Amon, U.S.D.J.
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Masciarelli v. New York City Department of Education
E.D.N.Y. Docket No. 22-cv-7553

Dear Judge Amon:

This law firm represents the Plaintiff in the above-referenced Action. This letter shall serve as the Plaintiff's response to the Defendant's February 1, 2024 (dated February 1, 2023) letter regarding the Plaintiff's filing of the Amended Complaint.

The Plaintiff apologizes to the Court and to the Defendant.

The Plaintiff should have waited until the Defendant filed its Answer before filing the Amended Complaint pursuant to FRCP Rule 15(a)(1)(B). It is the Plaintiff's intent to file an Amended Complaint, adding a third cause of action seeking a declaratory judgment declaring the purported release executed by the Plaintiff void based upon economic duress and the Defendant's lack of authority to obtain a release in exchange for an extended leave of absence pursuant to the UFT Arbitration Award.

As for the dismissed cause of action remaining in the Amended Complaint, while the Plaintiff certainly recognizes the Court's decision on the Motion to Dismiss, to preserve any appellate review of this case, the Plaintiff re-asserts the dismissed cause of action in the Amended Complaint with the clear understanding that it has been dismissed by the Court.

In the end, if the Court strikes the Amended Complaint from the docket, the Plaintiff will be re-filing it, as of right pursuant to FRCP Rule 15(a)(1)(B), once the Defendant files its Answer to the Complaint. If the Court chooses to permit the amendment to stand, the Plaintiff consents to any additional time the Defendant needs to Answer the Amended Complaint.

Thank you for your courtesies.

Respectfully submitted,
THE SCHER LAW FIRM, LLP
Austin Graff

ARG:ms

cc: Counsel of Record (by ECF)

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